

1905-018 Chancery Causes: O. W. Burk vs. S. T. Burk &
Lee Co.

Davis

1 Plat

CA - Estate Dispute
T-Property

To the Hon.H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:-

Your orator, O.W.Burk, humbly complaining; sheweth unto your Honor that his father, D.F.Burk, was in his lifetime seized and possessed of certain real estate lying in the county of Lee, to-wit: the farm on which he lived at the time of his death, known as the Home tract, adjoining the lands of C.C.Davis and others, containing 160 acres more or less; and a tract known as a part of the Jayne tract, adjoining the lands of W.Y.Tucker and others, containing 120 acres more or less, deeds to which are of record in the clerk's office of Lee county, to which reference is here made for a more particular description. And being so seized and possessed the said D.F.Burk, on or about the.....day of....., 190....., died intestate, leaving your orator, O.W.Burk, a widow, Martha Burk, and S.T.Burk, Lucy Z.Davis (nee Burk), A.B.Burk, Sarah C.Burk and W.M.Burk, his only children and heirs at law, the last two of whom are infants under the age of 21 years.

Your orator further states that the said real estate is, as he beleives, susceptible of partition among the parties entitled thereto, but if it cannot be so divided, then your orator desires that the same may be sold and the proceeds divided among those entitled thereto according to their respective rights, the shares of the infants to be held as directed by the statute in such cases made and provided. Should said property not be considered divisable in kind, your orator beleives, and here states, that the interests of those who are entitled to the said real estate, or its proceeds, will be promoted by a sale of the whole of the same, or by an allotment of part and a sale of the residue.

For as much therefore as your orator is remedyless in the premises, save by the aid of a court of equity, he prays that the said Martha Burk, widow, S.T.Burk, Lucy A.Davis, A.B.Burk, Sarah C.Burk and W.M.Burk be made parties defendants to this bill, and answer the same, the adults in their own proper persons, and the infants by guardian ad litem; that a guardian ad litem be appointed in this cause for said infant defendants, Sarah C.Burk and W.M.Burk, who shall answer this bill on oath, answer onder oath as to the several adults being waived; that proper process issue; that the said real estate be divided between the parties entitled thereto, or if more practica-

ble that part of the same be divided and the residue be sold and the proceeds be divided, in case any part of it be indivisible in kind; that all proper orders and decrees may be made, accounts taken and enquiries be directed; and that all such other, further and general relief as in the premises may be just and right may be granted.

And your orator will ever pray &c.

A.M.GOINS,

P.Q.

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O.W. Burk

vs. } Bill in Chy.

S.T. Burk et al.

Filed 2nd Aug. Rules, 1905-

H. T. Curing, clk.

1905- 1st Sept. Rules
Bill filed Legal
Service accepted
on process by Martha
Burk, Lucy Davis,
Sarah Burk, W. M.
Burk, A. B. Burk, &
S. T. Burk and D. N.
as to them Ans. of
G. A. L. filed for in-
frants.

" 2nd Sept. Rules
D. N. Confirmed &
Cause set for hear-
ing.

Costs:
Clerk \$11.19
Shff. 1.50
Atty. 25.00
G. A. L. 5.00
Print 1.50 Pa
Costs of Partition 65.00
\$109.19

Decree final
Dec Term 1905-

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of
Lee County, Virginia:

The answer of Sarah C. ~~Burk~~ and W.M. Burk, infants under the
age of twenty-one years by Geo. P. Cridlin, their guardian ad litem,
assigned to defend them in this suit, to a bill of complaint exhibited
against them et al by O.W. Burk, in this Honorable Court.

Respondents reserving to themselves the benefit of all just
exceptions to the said bill, for answer thereto, or to so much
thereof as they are advised it is material they should answer, by
their said guardian ad litem, answering they say:

That they are infants of tender years, and by reason of their
infancy, are incapable of understanding or of taking care of their
rights and interests. They, therefore, by their said guardian ad
litem, commend themselves and their rights and interests to the pro-
tection of the Court and pray that no decree may be pronounced which
will tend to their prejudice.

And having fully answered, the said respondents pray to be
hence dismissed, with their reasonable costs in this behalf expended,
and they will ever pray &c.

Geo. P. Cridlin
Guardian ad litem for Sarah C. ~~Burk~~
and W.M. Burk,

Sworn to before me by Geo. P. Cridlin, guardian ad litem for
Sarah C. ~~Burk~~ and W.M. Burk, this the ____ day of August, 1905.

H. L. Fanning, Clerk.

O. W. Burk plaintiff

vs { In Chy.

S. J. Burk et al. Defts.

Answer of G. A. L.

O.W.Burk,

Plaintiff.

vs.

In Chancery.

S.T.Burk et al.,

Defendants.

This cause came on this day to be heard upon the papers formerly read, and the report of L.M.Carmical, J.F.Jones, W.P.Weston and T.H.Hamilton, commissioners appointed by the decree entered in this cause on Sept. 18th, 1905, to ²allot to the defendant, Martha Burk, her dower in the lands of her late husband, D.F.Burk, deceased, and to make partition of the residue of said lands in severalty, amongst the children and heirs of the said D.F.Burk, and was argued by counsel. On consideration whereof, and for reasons appearing to the court, said report is approved and confirmed, the same having been filed for more than 10 days, and being unexpected to. It is therefore adjudged, ordered and decreed that W.M.Burk, take and hold Lot No. 1; that A.B.Burk, take and hold Lot No. 2; that S.T.Burk, take and hold Lots Nos. 3 & 3; that Lucy Z.Davis, take and hold Lot No. 4; that O.W.Burk, take and hold Lot No. 5; and that Sarah C.Burk, take and hold Lot No. 6, each respectively in fee-simple, with the rights of way and appurtenances belonging, according to the meets and bounds and as shown in said Commissioners' report and plats filed ~~herewith~~ on December 2nd, 1905. And it also appearing to the court from said report and plats that allotment of dower was assigned to the said Martha Burk, in the lands whereof her said husband was seized of an estate of inheritance, during the curverture between them, the court doth adjudge, order and decree that the said Martha Burk take and hold for and during the term of her natural life, of the lands so allotted to her as aforesaid, as and for her dower in her said husband's estate, according to the meets and bounds in said report and plats designated.

The court doth adjudge, order and decree that the Clerk of this court record in the Deed Books of the County kept in his office for the recordation of deeds the report and plats of said Commissioners, together with a copy of so much of the decree entered in this cause on September 18th, 1905, as is necessary to show the appointment of said Commissioners and the duties required of

them, as well as a copy of so much of this decree, as is necessary to show the confirmation of said report and plats, and said clerk will properly index said recordation.

The court doth further adjudge, order and decree, that the costs of this suit shall be paid by W.M.Burk, A.B.Burk, S.T.Burk, Lucy Z.Davis, O.W.Burk and Sarah C.Burk in equal proportions, including an attorney's fee of \$25.00 to A.M.Goins for his services in this suit, and the proportionate part of each of said costs and attorney's fee shall constitute a lien upon the real estate of each respectively, as shown by the aforesaid report and plats.

And all matters in this suit now having fully been settled, this cause is accordingly stricken from the docket.

Virginia, Lee County, to wit:

In the clerk's office of Lee County on this the 22nd day of December, 1905. The foregoing decree, Commissioners' Report and plat were presented, and admitted to record

*Teste: J. H. T. Ewing,
Clerk.*

O. W. Burk

vs. } Decree Final.

S. F. Burk et al.

Entered in C. B.

No. 8 page 104 re -

Entered in DB H3, P. 331

Examined Dec 22, 1908.

Judged.

Enter this decree,

this Dec. 14th, 1905.

J. H. W. S. ~~W. S. S.~~

O.W.Burk, Plaintiff,
vs. + In Chancery.
S.T.Burk et al., Defendants.

This cause came on this day to be heard upon the bill of the plaintiff taken for confessed as to the adult defendants, Martha Burk, S.T.Burk, Lucy Z.Davis and A.B.Burk, on whom process had been duly served, they failing to appear and plead, answer or demur to the said bill; the answer of the infant defendants, Sarah C.Burk and W.M.Burk, by Geo.P.Cridlin, their guardian ad litem, with replication thereto, and was argued by counsel for the plaintiff; on consideration whereof, the court doth order that L.M.Carmical, surveyor, J.F.Jones, W.P.Weston and T.H.Hamilton, who are hereby appointed commissioners for the purpose, who, or any two of whom, acting with surveyor Carmical, having been first duly sworn, do proceed to lay off and divide the real estate of which D.F.Burk died seized and possessed, consisting of two tracts of land, in the county of Lee, one known as the Home tract, adjoining the lands of C.C.Davis and others, containing 160 acres more or less, and the other known as a part of the Jayne tract, adjoining the lands of W.Y.Tucker and others, containing 120 acres more or less, as follows:

1st, They shall lay off and assign to the defendant^m, Martha Burk, widow of D.F.Burk, dec'd, by metes and bounds, one full and equal third part, in quality and quantity, of the two tracts of land aforesaid, whereof the said D.F.Burk died seized of an estate of inheritance; to have and to hold the said third part for the term of her natural life, as and for the dower of her the said Martha in the said lands;

2nd, They shall also make equal and fair partition into six equal parts the whole of the foregoing lands, having regard to quality and quantity, and assign one sixth part to each of the children of the said D.F.Burk, deceased, namely: to S.T.Burk, one sixth part; to O.W.Burk, one sixth part; to Lucy Z.Davis, one sixth part; to A.B.Burk, one sixth part; to Sarah C.Burk, one sixth part; and to W.M.Burk, one sixth part; and in making this partition said commissioners shall lay off the share of each of the children so that the widow's dower may bear equally upon the share of each child.

But should the commissioners find it impracticable to divide the said lands among the aforesaid parties, or should they be of opinion

#2.

that the interest of said parties would be more promoted by a sale of the same, in such case they are required to report the facts, upon which their opinion is based, to the court, and also what in their opinion, is the fee simple value of the whole of the real estate of which D.F.Burk died seized and possessed; and in either case they are required to report their proceedings under this order to the next term of this court. And this cause is continued.

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O. W. Burk

vs. { Decree # 1.

S. T. Burk et al.

Enter this decree,
this Sept. 18 1905.

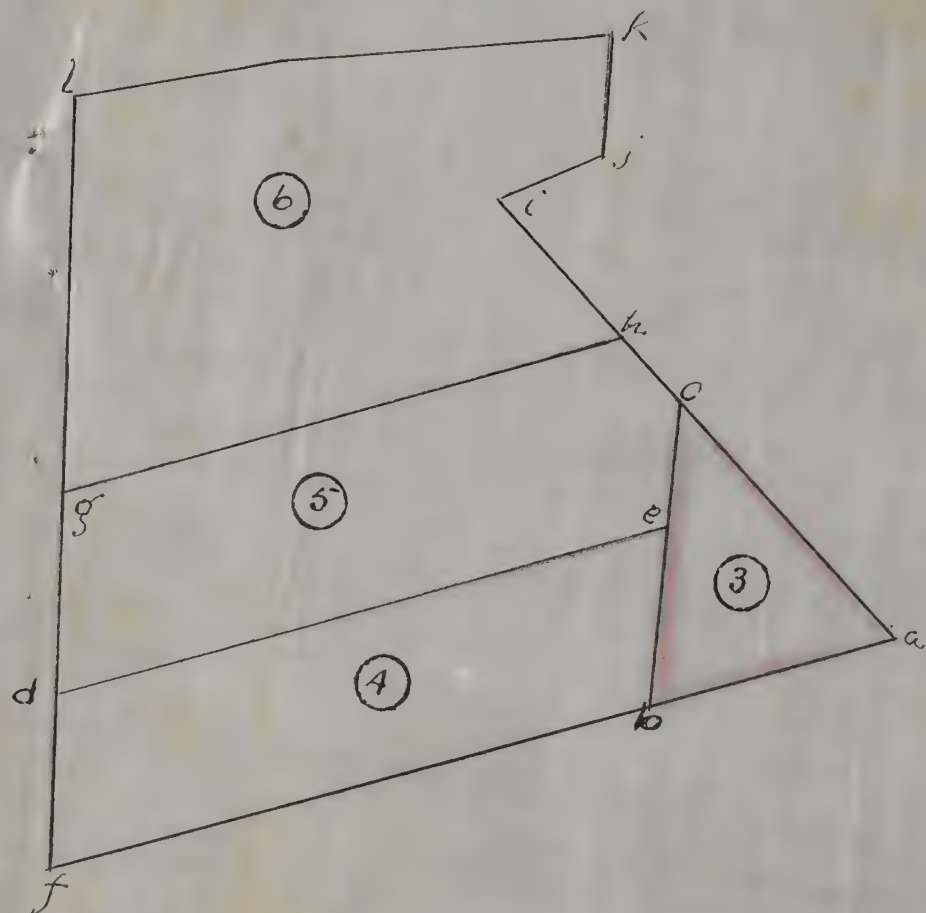
At a court

Entered in C.O. B. 8

page 65 etc.

Entered in DB. 43 Page 327 etc

Examined Dec. 22, 1905.



O.W. Burk }
 vs
 S.T. Burk }

9n chy

Commissioners Plat
 of Partition.

Dec - By L.M. Carmichael et al
 1905.

O. W. Burk
VS
S. T. Burk et al } in chg

Pursuant to an order of the Circuit Court of Lee Co. in the above Cause, we the undersigned Commissioners have partitioned the lands of S. F. Burk declared according to the following plat and report

We found the lands composed of two separate tracts about 2 miles apart. Out of the lower tract we have laid off and assigned to Martha Burk - the widow of said. S. F. Burk down equal as we consider, to one third the rental value of the two tracts when taken together, and which bounded as follows. Beginning at (1) a history original corner and at N.E. corner of orchard. Thence with original line S $77^{\circ}26'$ E 80 poles to (A) a stake. Thence N $8^{\circ}34'$ W 102 poles to a stake in a pond. N $77^{\circ}26'$ W 86 poles to a stake on original line of tract. Thence with original line S $15^{\circ}26'$ E 20 poles to a stake S $38^{\circ}20'$ W $27^{\frac{1}{2}}$ pole to two black oaks S $37^{\circ}28'$ pole to a stake. S $56^{\circ}52'$ W $27^{\frac{1}{2}}$ poles to a stake in public road and with the same S $31^{\circ}46'$ E 24 poles S $38^{\circ}46'$ E $25^{\frac{7}{10}}$ poles to original corner and with original line N $48^{\circ}26'$ E $26^{\frac{1}{2}}$ poles to the beginning. Containing 68 acres more or less - See Fig 1. A. B. C. D. E. F. - 1

We have laid off and assigned to the Infant here W. W. Burk Lot No. 1 bounded as follows Beginning at (G) a rock on the north corner line Thence N $8^{\circ}34'$ W 51 poles to (H) a stake about 1 pole east of a cherry tree on original N. E. line Thence with original line of tract S $61^{\circ}20'$ W 73 poles to a large chestnut

run a sink S 67½ W 20 poles to 3 small blackoaks (unwound)
thence S 15½ E 17 poles to a stake corner to the Garrett 3 acre
tract and with line of same S 38 W 23 poles to a stake
S 76 E 30 poles to a stake on the a line of original tract
and with line thereof N 15½ E 13 poles to a stake corner
to lower and with line of same S 77½ E 76 poles
to the beginning (Containing 800 acres more or
less). This lower lot N 1 shall have a conven-
ient right of way through to the public
road. See Fig. G. H. I. J. C. - A

We have laid off and assigned to ~~W. T. C. C.~~
~~David J. C. C.~~ of A. B. Burk Lot N 2 which
is described as follows. Beginning at (G)
a rock corner to Lot 1, thence with line thereof
N 8¾ W 51 poles to (H) a stake on the original line
thence with original of tract S 61° 20 E 22½ poles
to a large Chestnut N 74½ E 64½ poles to a stake
(blackoak & poplars not found) S 43 E 102 poles
to a Chestnut & a blackoak S 74 E 12 poles
to a small blackoak & Hickory S 22 E 10 poles
to a stake corner to Lot 103 and with line
thereof N 77½ W 84 poles to a stake on the
lower line and with the same N 8¾ W
36 poles to a stake in a pond N 77½ W 20
poles to the beginning (Containing 500 acres
more or less). See Fig. A. H. L. M. N. O. P. K. B. - A

We have laid off and assigned to S. T. Burk Lots
No 3 and 5. Lot N 3 is the home tract is
bounded as follows. Beginning on the south
original line, a corner to the lower, thence with
lower line N 8¾ W 65½ poles to a stake S 77½ E 84 poles
to a stake on the East original line and with

The same S 2 1/2 E 63 poles to 3 small black-oaks -
top of a ridge corner to the Davis land thence with
original line (being the Davis line) N 77 1/2 W 76 poles
to the beginning containing 30 acres more
or less - Represented by Fwy A. K. P. Q-A

Lot No 3 in the Gayne tract may be described as
follows - Beginning at (a) a hickory, blackoak & small
whiteoak Tucker corner thence with Tucker
line S 67 1/2 W 53 poles to (b) a stake N 2 1/4 W 64 poles to (c)
a stake on the original line & with the same S 49 1/2 E
68 poles to (a) the beginning containing 10 acres
more or less - Lot No 3 shall have a convenient
haul way through Lots No 4 & 5 to the right of way
through Widow Gaynes dower.

We have laid off and assigned to Lucy & Davis Lot
No 4 (being in the Gayne tract) which is bounded as follows
Beginning at (†) a stone corner to Tucker land
also corner to the Widow Gayne dower & with line
of the latter N 6 W 37.64 poles to (d) a stake thence
N 67 1/2 E 133 poles to a stake on the west line of
Lot No 3 and with line thereof S 2 1/4 E 38 poles
to a stake on the original south line and
with it S 67 1/2 W 131 poles to the beginning
containing 29 acres more or less.

see Fwy J. d. e. b-f

This Lot No 4 has
a right of way through a small portion of
Lot No 5 to right of way through the Widow
Gaynes dower.

We have laid off and assigned to O. W. Buck Lot No 5
which is described as follows. Beginning at (d) a stake
corner to Lot No 4 and on the Gayne line & with said
line N 6 W 41 1/2 poles to (g) a stake N 67 1/2 E 123 poles to

a stake on the East original line and with some
S 49½ E 17 poles to a stake corner to Lot No 3 and
with line thereof S 2¼ E 26 poles to a stake corner
to Lot No 4 and with line thereof S 67½ W 133 poles
to the beginning Containing 33 acres, more
or less - see Plan

We have laid off and assigned to Sarah C. Burk
(now Savitt) Lot No 6 and which is bounded as
follows Beginning at a stake on the Gayne
line & corner to Lot No 5 thence with line of said
Lot N 67½ E 123 poles to a stake on the East original
line & with said line N 49½ W 38 poles to a chestnut
stump near a small white oak thence continuing
with original lines of tract N 48½ W 39 poles to
a chestnut stump near a small white oak
thence continuing with original lines of tract
N 60½ E 22½ poles to a large chestnut oak stump
N 44½ W 25½ poles to a dead chestnut stump thence
S 78½ W 67 poles to a black walnut S 74 W 44½ poles
to a rock corner to the Gayne corner & with
line of same S 66 E 83 poles to the beginning
Containing 77 acres More or less

This Lot No 6 is represented by letters
and shall have a convenient haul-way
through Lot 5 to the right of way through
the Gayne land, which is held in common
by all the Lots 3, 4, 5 and 6 as above described

Respect submitted

L. M. Carmichael

J. F. Jones

W. P. Weston

T. H. Hamallson

Commissioners

P.S. By request of the heirs & parties interested we did not position the
corner.

O. W. Burk

VS

S. T. Burk

Cost Partition

L. M. Carnicel \$ 30.00

J. F. Jones 1 day 2.00

W. P. Weston 3 6.00

T. H. Hamilton 2 1/2 5.00

Mrs Burk for board 7.00

O. W. Burk " " 1.00

Hands making survey 14.00

~~\$~~ 65.00

(2)

O. W. Burke

vs. } Comr's Report & Plat.

S. F. Burke et al

Filed Dec. 2nd, 1906.

J. H. T. Emery, Clerk.

Entered in DBH 3 page 378 etc
Examined Dec 22, 1905.

Indexed

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *S. T. Burk, Lucy J. Davis,*
A. B. Burk, Martha Burk, Sarah C. Burk,
and H. M. Burk

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on
the *3rd* Monday in *August*, 190*2*, to answer a bill in chancery exhibited against *them,*
in our said court, by O. W. Burk.

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *10th*
day of *August*, 190*2*, and 1*30th* year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk.

H. C. T. Ewing, Clerk.

The next legal service of the within
process, this August 11th, 1905;

O. W. Burk

VS

}

SUBPENA
IN
CHANCERY

S. F. Burk et al

A. M. Louis p. q

To 2nd August Rules.
Circuit Court.

Martha Burk
Leroy Lewis
Sarah Burk
W. M. Burk

O. W. Burk
S. F. Burk